



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,102	02/02/2004	Michael J. Klassen	BULL-1-1002	4662

25315 7590 02/18/2005

BLACK LOWE & GRAHAM, PLLC  
701 FIFTH AVENUE  
SUITE 4800  
SEATTLE, WA 98104

EXAMINER

PATEL, KIRAN B

ART UNIT	PAPER NUMBER
----------	--------------

3612

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/770,102

Applicant(s)

KLASSEN, MICHAEL J.

Examiner

Kiran B. Patel

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 2/15/04.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Non-Final Rejection**

#### **Election/Restriction**

1. Applicant's election without traverse of claims 1-14 is acknowledged.

Claims 15-20, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

#### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8-9, as best understood, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-9 are confusing and are not clear because claimed limitations, (claim 8, a counterweight; claim 9, a spring), are not shown in the figures and/or lacks

support in the specification and therefore fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These limitations must be shown or the feature(s) canceled from the claim(s). Applicant is requested to go through the application and ensure that the claimed matter has been described in the specification and shown in the drawing in such a way as to convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Correction is required.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawhorne (1,864,047).

Regarding claims 1-3 Lawhorne (1,864,047) discloses in Fig. 1-8 the invention as claimed to include a cab 108; a left sidewall 28 attached to the left side and a

right sidewall 29 attached to right side and both deployed in horizontal position; a truck bed 14; and a floor 16.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-6, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawhorne (1,864,047) in view of Grzegorzewski et al. (6,644,708).

Regarding claims 4-6, 12-14, Lawhorne (1,864,047) discloses the invention as claimed to include a truck frame 11; a means for urging Fig 4; a tonneau cover top 41; a plurality of extendable supports 42; and a seat 36.

However, Lawhorne (1,864,047) does not disclose a tailgate.

Grzegorzewski et al. (6,644,708) discloses a tailgate 24.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by

Lawhorne (1,864,047), to include a tailgate, as disclosed by Grzegorzewski et al. (6,644,708), to provide access to the bed.

5. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawhorne (1,864,047) in view of Grzegorzewski et al. (6,644,708) and Heberlein (4,437,705).

Regarding claims 7, Lawhorne (1,864,047) as applied to claim 6 discloses the invention as claimed.

However, Lawhorne (1,864,047) does not disclose a hydraulic cylinder.

Heberlein (4,437,705) discloses a hydraulic cylinder 28.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by Lawhorne (1,864,047), to include a hydraulic cylinder, as disclosed by Heberlein (4,437,705), to provide urging for the sidewall.

6. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawhorne (1,864,047) in view of Grzegorzewski et al. (6,644,708) and Barrett (1,955,167).

Regarding claims 10-11, Lawhorne (1,864,047) as applied to claim 4 discloses the invention as claimed.

However, Lawhorne (1,864,047) does not disclose a first and a second post.

Barrett (1,955,167) discloses a first 29 and a second 30 post.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by Lawhorne (1,864,047), to include a first and a second post, as disclosed by Barrett (1,955,167), to provide support.

### **Conclusion**

7. The prior art made of record in attached Notice of Reference Cited (PTO-892) and not relied upon is considered pertinent to applicant's disclosure. This art of record shows various features similar to the applicant's invention.

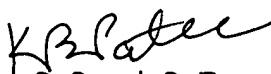
8. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Kiran B. Patel whose telephone number is 703-305-0254. The examiner can normally be reached on M-F from 8:00 to 5:00. The

Application/Control Number: 10/770,102

Page 7

Art Unit: 3612

fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

  
Kiran B. Patel, P. E.  
Primary Examiner  
Art Unit 3612  
February 15, 2005